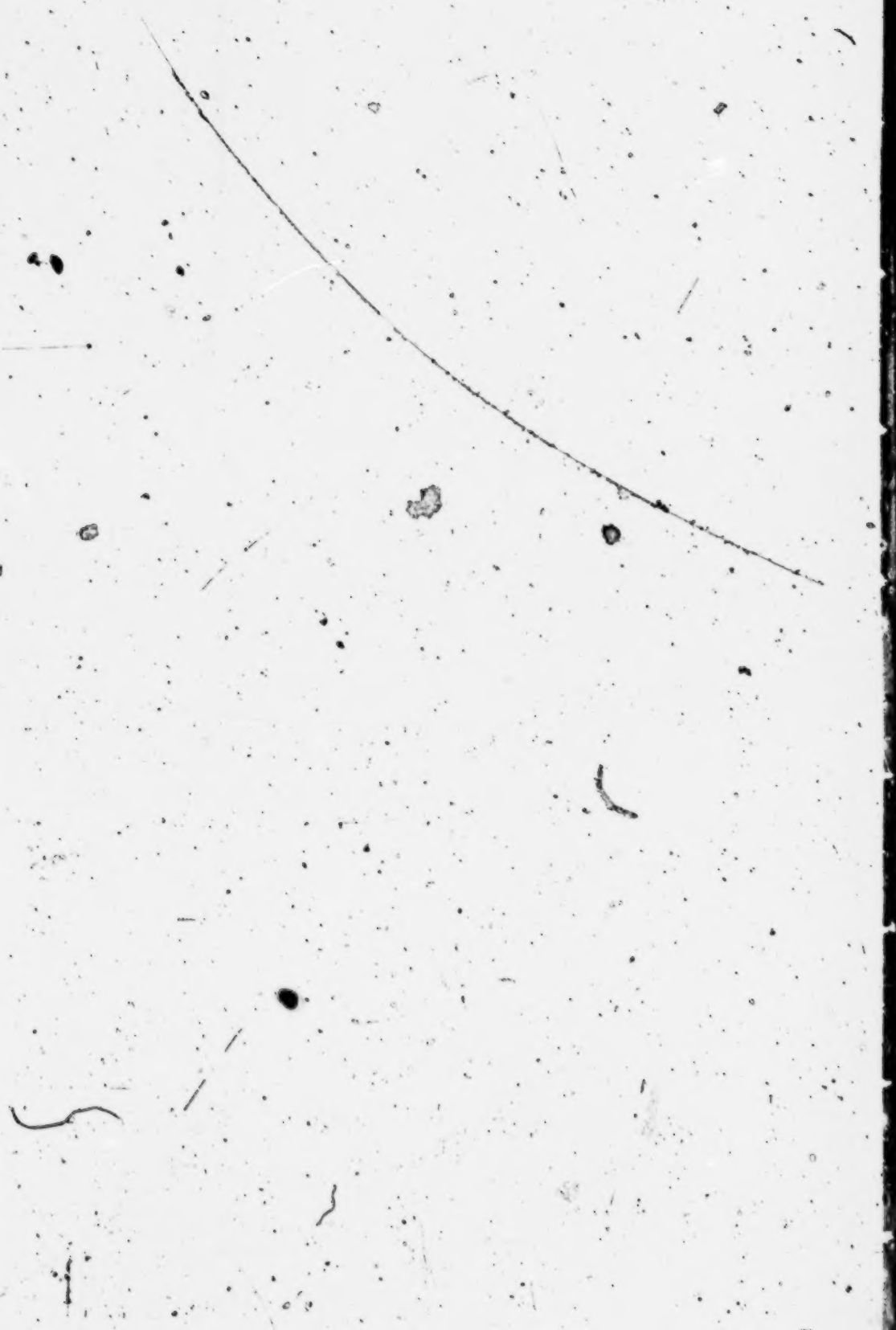

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MAY 28 1959

JAMES R. BROWNING, Clerk

Supreme Court of the United States

OCTOBER TERM, 1958

No. 853

UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

MEADOW CREEK COAL COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY BRIEF TO OPPOSITION BRIEF

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Because Petitioner believes that answers to arguments and statements advanced in Meadow Creek Coal Company's reply brief in opposition to the granting of the writ of certiorari herein are to be found in the Petition herein filed, no attempt will be made to reply, *seriatim*, thereto. However, the following has relevancy to Point 7 of the Reasons for Granting the Writ and likewise challenges Meadow Creek's position as asserted in its brief.[1]

[1] Herein Meadow Creek Coal Company, Inc. is referred to as "Meadow Creek," and "O.B." refers to its reply or opposition brief.

I.

The payment of strike benefits as an inducement of employees not to work is a matter within the area of labor-management relations preempted by Congress. The District Court, therefore, was without jurisdiction to predicate liability to any extent, under state law, on such union conduct.

The issue of UMW's liability based upon strike benefits furnished to union members unemployed because of the strike is discussed beginning at pages 15, 28 and 72 of the Petition. We there point out the conflict in the conclusion of the District Court, expressed in terms of state law, and federal policy as expressed in Section 20 of The Clayton Act (29 USC 52) and in Section 4(c) of the Norris-LaGuardia Act (29 USC 104 (c)). Though we did not so point out in the petition, that federal policy finds further expression in the National Labor Relations Act, for manifestly the matter of strike benefits is one of the "multitude of activities" regulated by Sections 7 and 8 of that Act.

The decision of this Court in *San Diego Building Trades Council* v. *Garmon*, U. S. , 3 L. ed. 2d 775, announced subsequent to preparation of the petition herein, clarifies the effect of such actual and potential conflict in state and federal regulation of labor-management relations. In the *Garmon* case this Court held that the Courts are without jurisdiction to award damages under state law against a union based on conduct within the "central aim of federal regulation" save in those instances of conduct "marked by violence and imminent threats to public order." (p. 782, 784). Even in the area subject to state regulation, the *Garmon* decision makes it clear that power under state authority may not be "exerted to compensate for anything more than the

direct consequences of the violent conduct." (p. 785, fn. 6). [Emphasis supplied.]

Without undertaking to review the facts of the present case, we submit that there is a fundamental conflict in the decision of the Court of Appeals herein and the *Garmon* decision. Though perhaps the principles announced in the *Garmon* case would not prevent action with respect to certain phases of this case, as found by the Court below, nevertheless, it would, as we think, preclude an award of damages on the theory that inducement of Meadow Creek employees not to work by the payment of strike benefits by the union constituted a part of an unlawful interference with the business of the company.

Meadow Creek (O.B. 66) insists that the District Court's finding relative to the payment of strike benefits was simply as a "fact" and not as a "determining matter."[2] We disagree. Plainly payment of strike benefits is one of the "acts and conduct of" UMW which the District Court held constituted interference with Meadow Creek's business. (See Conclusion of Law No. 5, A. 11.) The Court therefore awarded damages based, at least in part, on the inability of the mine to operate economically because of the refusal of 130 of the 170 employees to accept employment on a non-union basis. The Court, rather than measuring damages upon the basis of direct consequences of particular acts, awarded damages on the

[2] In the original complaint Meadow Creek alluded to payment of strike benefits as a part of the tort complained of, alleging that the UMW "bribed" the Meadow Creek employees "to keep them from returning to work" (R. 9). The District Court (and the Court of Appeals in virtually the same language) did not term the payment of strike benefits a bribe, but it did significantly find, after noting that strike benefits were paid, that such behefits were paid to the employees "to keep them from returning to work for plaintiff." (A. 8; see also A. 20).

basis of lack of earnings of Meadow Creek in the year 1948.

CONCLUSION

For the reasons set forth herein, in addition to those set forth in the Petition for Writ of Certiorari, Petitioner submits that Meadow Creek's opposition to the granting of said Petition is without merit and should be rejected and again pray for the award of the Petition and that a writ of certiorari issue to review the decision and judgments of the United States Court of Appeals for the Sixth Circuit, entered in its Case No. 13,470, on January 21, 1959 and February 23, 1959, as set forth in said Petition.

Respectfully submitted,

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